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| 09/633,358 | 08/04/2000 | Christopher Andrew Barton | 550-181 | 2002 |

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| EXAMINER | |
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| VU, TUAN A | |

| ART UNIT | PAPER NUMBER |
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| 2124 | 10 |

DATE MAILED: 02/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. 09/633,358 | Applicant(s) BARTON, CHRISTOPHER ANDREW | |
|---|---|---|---|
| | Examiner Tuan A Vu | Art Unit 2124 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *02 December 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-66* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-66* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *16 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

## DETAILED ACTION

1. This action is responsive to the Applicant's response filed 12/2/2003.

As indicated in Applicant's response, no claims have been presently amended. Claims 1-66 are pending in the office action.

The terminal disclaimer submitted and filed 12/2/2003 has been considered and the double patenting rejection thereby has been withdrawn.

### *Claim Rejections - 35 USC § 101*

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 1 and 22 recite a computer program product for tag detecting and for update triggering but fails to recite a tangible medium to support the program in order to accomplish the steps leading to a useful result. Absent a computer-readable medium the computer program product as described cannot be implemented therefore no result can be achieved. Hence, the set of claims 1-22 do not fulfill the requirement of a statutory subject matter. Appropriate action is required.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-7, 12, 14-15, 17, 22-29, 34, 36-39, 44-51, 56, 58-61, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neal, USPN: 6,192,518 (hereinafter Neal), in view of Cheng et al, USPN: 6,151,643 (hereinafter Cheng).

**As per claim 1**, Neal discloses a computer program method for updating a computer file used by a computer, said computer program method comprising:

tag detecting code operable to detect within data received by said computer a tag indicative of a more update files vis-à-vis a given version of said computer file for use by said computer (e.g. col. 3, lines 45-67; col. 5, lines 9-17; col. 8, lines 7-13; Fig. 2A,C);

update triggering code operable upon detection of said tag to trigger downloading from a determined source to provide said update files of said computer file (e.g. steps *210-212* – Fig. 2A).

Neal does not explicitly specify that the tag is indicative of existence of an updated version although Neal discloses parsing and version compliance checking processes to identify which current files in the target system need to be updated by additional retrieval from a source computer ( Fig. 2A-C). The use of communication messaging between a server and a client to communicate latest version of software to be installed on receiving client machine was a well-known concept at the time the invention was made. Analogously to Neal' method of communicating update files to a target machine via processing of Emails, Cheng, in a system to download software from a server to client, teaches communicating of a electronic mail to indicate existence of a newer version of software for update (e.g. col. 20, lines 14-32; Fig. 3-5). Hence, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide, resources allowing, the triggering code as suggested by Neal so to enhance

it with the teachings of Cheng, i.e. use of message to communicate the existence of a newer version and to provide code to retrieve such latest version of software file for the target computer. One of ordinary skill in the art would have done so because the electronic message to inform client can be done periodically thus provide the client with better support of the state of software updating as taught by Cheng (see Cheng: col. 5, lines 18-33) thus to alleviate checking resources to be effected on the target machine; and if resources are available, to transmit a entire software latest version file, also to provide a one-time quick retrieval of a whole version as taught by Cheng without communications strains between a remote computer executing the software and a source provider so to avert downtime also feared by Neal (e.g. col. 1, lines 20-29)

**As per claim 2**, Neal discloses header portion (e.g. Fig. 3A; col. 7, lines 42-50)

**As per claim 3**, this limitation has been addressed Neal's processing of Emails as set forth in claim 1.

**As per claim 4**, the combination of Neal/Cheng provides the predetermined source providing updated version (Cheng (col. 20, lines 14-32; Fig. 3-5) or modifying of current file used by the computer to form the updated version ( see Neal: Fig. 2a-c) and would have been obvious for the same reasons given in claim 1 above.

**As per claim 5**, Neal does not explicitly teach including version identifier but the combination of Neal/Cheng does provide informing the client with the latest version as addressed in claim 1 (see Cheng: col. 5, lines 18-33). In view of the teachings by Cheng to inform of an existing newer version and by Neal to provide code to check whether a currently configured files in the client system have all the needed files (see Neal: Fig. 2b), the limitation as to compare identifier as claimed is thereby obvious in light of the same rationale as set forth in

claim 1 and also because the determining as to whether a version is the latest based on comparing and checking as taught above would be inherent in the techniques as cited by Cheng or Neal.

**As per claim 6**, Neal implicitly discloses inserting code to insert a tag (e.g. col. 5, lines 9-17; col. 6, lines 25-34) indicative of a software files to map and adjust against existing software in the target system; and tagged data to inform on specifics on how to synchronize the currently used version on the receiving computer with the upgrade version (e.g. Fig. 2A-C); so that in view of the teachings by Cheng ( re claim 1) and Neal, this tag informing of a latest version limitation has been addressed in claim 1 or 5 above.

**As per claim 7**, the combined teachings of Neal and Cheng teaches the inserting in data of tag indicative as to whether a version level of the computer file is currently used by the computer or newer than that version used by the computer (re claim 1 and 5); but does not specify not inserting a tag when said data already includes the tag. It would have been obvious for one of ordinary skill in the art at the time the invention was made to include in the code to insert tag as taught by the combination of Neal and Cheng, the ability of not creating any tag when the received data already has the tag because this would save extraneous code resources in that the duplication of an already-performed process is obviated.

**As per claim 12**, Cheng teaches activity log (e.g. col. 20, line 62 to col. 21, line 44) and Neal discloses snapshot components and registry scanning for previously installed components (e.g. Fig. 2b) and archiving previously received files ( e.g. Fig. 2E). A notion to store previously acquired data or activities are hence suggested. It would have been obvious for one of ordinary skill in the art at the time the invention was made to implement the tag-derived installation code

with tag parameters indicative of operations history tracking ability as suggested by Cheng to the software registration by Neal, for this would inform on activities during the installation provided by the tag-triggered code as suggested by Neal, because the more information about operations sequences and status of the activation process the easier it is to address problems and effect timely recovery.

**As per claims 14 and 15**, the combination Neal/Cheng discloses that (re claim 14) a predetermined source contains an updated version (e.g. Cheng: Fig. 12; *provider* - col. 14, lines 29-64) said computer file and that (re claim 15) such source is remote from said computer (e.g. Neal: Fig. 2A-C).

**As per claim 17**, only Cheng discloses encryption of data received from trusted sources (e.g. col. 6, lines 31-50). Official notice is taken that encrypting data traveling across a wide network area to provide more security was a well-known concept at the time of the invention. Thus, in view of such commonly known practice, it would have been obvious for one of ordinary skill in the art at the time the invention was made to implement the retrieval of update files and data in the communication process by Neal the encryption (including decryption) of data by Cheng as mentioned above in order to provide additional security control to the installation of data coming from the internet as commonly practiced in the network communication industry.

**As per claim 22**, Neal discloses a computer program comprising:

tag inserting code to detect an tag operable to trigger an update of an older version file in use by a second computer when said tag is received by a second computer (e.g. col. 5, lines 9-17; col. 6, lines 25-34) and a upgrade code used by a first computer ( e.g. Figs 2A-C).

Neal does not disclose explicitly specify that the tag is indicative of a version level to be used by a first computer. But these limitations have been addressed in claim 1 and 7 above using the teaching of Neal/Cheng, hence are rejected herein using the same rationale as above.

**As per claim 23**, this is the method claim of claim 1 above and is rejected using the same rejection set forth in claim 1 above, except for the limitation about a computer program product, which does not apply herein.

**As per claims 24-29**, these claims include similar limitations of claims 2-7 above, respectively; hence are rejected using the same corresponding rationales set forth therein.

**As per claims 34, 36-37**, these claims include similar limitations of claims 12, 14-15 above, respectively; hence are rejected using the same corresponding rationales set forth therein.

**As per claim 38**, Neal discloses Internet link (e.g. *internet 110* - Fig. 1).

**As per claim 39**, see rejection of claim 17.

**As per claim 44**, this is the method claim of claim 22 above and is rejected using the same rejection set forth therein.

**As per claim 45**, this is the apparatus version of claim 23 above and is rejected using the same rejection set forth in claim 23 above.

**As per claims 46-48**, these claims include similar limitations of claims 2-4 above, respectively; hence are rejected using the same corresponding rationales set forth therein.

**As per claims 49-51**, in reference to claim 45, these claims include similar limitations of claims 5-7 above, respectively; hence are rejected using the same corresponding rationales set forth therein.

**As per claims 56, and 58-59**, these claims include similar limitations of claims 12, and 14-15 above, respectively; hence are rejected using the same corresponding rationales set forth therein.

**As per claims 60 and 61**, see rejection of claims 38 and 39, respectively.

**As per claim 66**, this claim is the apparatus version of claim 22 above; hence is rejected herein using the same corresponding rationale set forth therein.

6. Claims 8-11, 13, 16, 21, 30-33, 35, 43, 52-55, 57, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neal, USPN: 6,192,518, in view of Cheng and, as applied to claims 1, 11, 12, 23, 34, 45, 56 above, and further in view of Hodges et al., USPN: 6,053,423 (hereinafter Hodges).

**As per claims 8, 9, and 10**, the combined teachings of Neal/Cheng teach about updating and downloading files but do not teach that such file is (re claim 8) is a virus definition file,( re claim 9) a virus detection program file,( re claim 10) a anti-virus computer program file. Official notice is taken that the update of virus file in the network dependent computer system was a well-known concept in the art at the time of the invention. Further, Hodges teaches a system to upgrade anti-virus applications (Figs. 1-12) including virus definition files (e.g. VIRUS-SIGSW95.DAT-- Fig. 11), anti-virus applications and detection files( e.g. col. 2, lines 22-32; antivirus_AppW95 – Fig. 11). In view of the well-known practices, it would have been obvious for one of ordinary skill in the art at the time the invention was made to include as type of computer files to update in Neal/Cheng's combined system the anti-virus related computer files as claimed because this would provide well-known and asked-for security features to the

communication and data importing scheme as disclosed by Neal/Cheng within a computer network.

**As per claim 11**, the combined teachings of Neal/Cheng do not explicitly disclose that the tag includes data indicative of a version level of a computer virus definition file, a virus detection engine program file, or an anti-virus program file. In view of the teachings of Hodges and the recognized well-known practices from above, combined with the tag teachings as set forth in claim 1 above, these limitations would have been obvious for one of ordinary skill in the art at the time the invention was made for the same reasons set forth in claims 1 and 8, 9, 10 above.

**As per claim 13**, Neal teaches scanning of received messages of the upgrade file at the client machine and archiving previously received files (e.g. Fig. 2A-C; 2E) and Cheng discloses a client system scanning operation during the retrieving correct version of resident software (e.g. Fig. 8; col. 13-16); but does not specify that parameters in said received messages to be providing indication of previous anti-virus scanning operations. However, by virtue of Hodges' teachings ( re claims 8-11) and Neal/Cheng's tag parameters indicating of previously performed operations( re claim 12) as mentioned above, it would have been obvious for one of ordinary skill in the art at the time the invention was made to implement tagged data as taught by Neal/Cheng so that it would indicate, by way of Hodges' teaching, about previously antivirus-related files operations performed just as it would indicate which previous file usage or loading had been saved in the archives in the receiving computer of Neal/Cheng's system( re claim 12) for the same benefits as mentioned in claims 8-11 above.

**As per claim 16**, with reference to claim 11, see claims 15 and 38 above for corresponding rationale for rejection.

**As per claim 21**, only Cheng discloses including in the additional parameters needed in the computer environment for the component files installation as well as range of file versions and associated components (e.g. *selected Version Range* - Fig. 13b; Fig 13a-e); but does not specify not triggering an update if the tag indicates that the updated version is some pre-determined versions ahead of said computer file currently used by the computer. One of ordinary skill in the art would recognize from Cheng's above teachings that any version falling out of acceptable compatibility range with the current version used by the resident operating system would not trigger an update. Further, Hodges, in the system from claims 8-11 above, discloses the mapping of operating system and computer file version for upgrade analogous to the component/version scanning and verifying by Cheng (see Cheng: Fig. 8-10), suggesting thereby that versions later than those compatible with a specific operating system setting will not trigger an update. Hence, using the above suggestions by Cheng (combined with the tag teachings of Neal) and those by Hodges, it would have been obvious for one of ordinary skill in the art at the time the invention was made to implement code in Neal/Cheng 's method so that it would not trigger an update should a version detected by the tag indicates that such version is some numbers ahead of the current version ( e.g. WIN 95) used by the computer, just as suggested by Hodges over the teachings of Neal/Cheng. One of ordinary skill in the art would be motivated to do so because this would automate an update based on a predetermined settings thus alleviate data parsing time and mostly effort from additional (e.g. administrative) human intervention (Hodges: col. 4, lines 5-25).

**As per claims 30-33 and 52-55**, these claims include similar limitations of claims 8-11, respectively; hence are rejected using the same corresponding rationales set forth therein.

**As per claims 35 and 57**, see rejection of claim 13 above for corresponding rejection.

**As per claims 43 and 65**, these claims include limitations that have already been addressed in claim 21 above; hence are rejected herein with the same rationale as set forth in claim 21.

7. Claims 18-19, 40-41, and 62-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neal, USPN: 6,192,518, in view of Cheng, as applied to claims 1, 23, 45 above, and further in view of Cowan, USPN: 6,031,830 (hereinafter Cowan).

**As per claims 18 and 19**, the combination Neal/Cheng does not specify (re claim 18) waiting for an initial delay period following detection of said tag before downloading of said updated version computer file; and (re claim 19) if downloading of such file fails, then waiting for a failure delay before re-triggering a download of such updated version file, even though Cheng discloses a blocking until a full ads download is achieved (e.g. col. 35, line 50 to col. 36, line 21). Cowan, in a system to upgrade remote devices operating software, discloses receiving the available software within a predetermined time or otherwise retransmitting the request to retrieve software ( Fig. 10; col. 15, lines 10-17). It would have been obvious for one of ordinary skill in the art at the time the invention was made to apply the waiting for an initial period prior to retrieving the software file, i.e. a failure period, before restarting, i.e. re-triggering, the request to download as taught by Cowan to the method of downloading components after detecting the tag in Neal/Cheng's system because this would alleviate the time for which a download request has to be allotted, while not disregarding any failure possibility, thus making the

download/retrieval process as taught by Neal/Cheng all the more time and resource efficient, like Cowan suggests in col. 2, lines 13-35.

**As per claims 40 and 41**, in reference to claim 23, these claims include similar limitations to claims 18 and 19 above, respectively; hence are rejected using the same corresponding rationale set forth therein.

**As per claims 62 and 63**, in reference to claim 45, these claims include similar limitations to claims 18 and 19 above, respectively; hence are rejected using the same corresponding rationale set forth therein.

8. Claims 20, 42, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neal, USPN: 6,192,518, in view of Cheng, and Cowan, as applied to claims 19, 41, 63 above, and further in view of Lambert et al., USPN: 6,038,601 ( hereinafter Lambert).

**As per claim 20**, in reference to claim 19, the combination Neal/Cheng/Cowan does not disclose that the failure delay period is a pseudo-random value determined by update triggering code. Lambert, in a system to distribute document data to a requesting client, discloses generating a random number to set the wait time prior to triggering the request to receive data (e.g. col. 27, lines 32-42). Thus, it would have been obvious for one of ordinary skill in the art at the time the invention was made to set a pseudo-randomized value as suggested by Lambert for the delay period as suggested by Cowan and apply it to the download/update process disclosed by the combined teachings of Neal/Cheng/Cowan because this would minimize the risks of overloading the receiving end buffering capability and better identify the source sender due to unreliability of the transmission protocol (Lambert: col. 27, col. 43-53) used in the network data downloading scheme disclosed by Neal/Cheng/Cowan.

**As per claim 42**, in reference to claim 41, this claim includes similar limitations to claim 20 above, respectively; hence is rejected using the same corresponding rationales set forth therein.

**As per claim 64**, in reference to claim 63, see claim 20 for rejection.

***Conclusion***

9. Applicant's arguments filed 12/2/2003 have been fully considered but they are moot in view of new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan A Vu whose telephone number is (703)305-7207. The examiner can normally be reached on 8AM-4:30PM/Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (703)305-9662.

**Any response to this action should be mailed to**:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 872-9306 ( for formal communications intended for entry)

**or:** (703) 746-8734 ( for informal or draft communications, please label "PROPOSED" or "DRAFT" – Please consult Examiner before use)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA. , 22202. 4th Floor( Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

VAT
February 1, 2004

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